



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 8, 1939

Honorable T. M. Trimble
First Assistant State Superintendent
Austin, Texas

Dear Sir:

Opinion No. 0-709

Re: Whether it is a violation of the Nepotism Law for the Board of Trustees appointed by the City Commission to elect a daughter of one of the Commissioners to a position as a teacher in the city school system.

We are in receipt of your letter of April 25, 1939, wherein you request our opinion in response to this question:

"Is it a violation of the Nepotism Law for the Board of Trustees, that has been appointed by a City Commission, to elect one of the Commissioners' daughters to a position in the City School System?"

The Nepotism statute is Article 432, Penal Code, and reads as follows:

"No officer of this State or any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, or any officer or member of any State, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever. Acts 1909, p. 85, Acts 1918, p. 149."

44
Hon. T. M. Trimble, May 8, 1939, Page 2.

A careful reading of the above statute discloses that the same affects only a situation where the person appointed is related within the prohibited degree to the person appointing him or to some other member of the appointing board. In the instance which you inquire about, the City Commission does not appoint the teacher. The Board of Trustees performs that function. So far as your letter discloses, there is no kinship between the teacher and any member of the Board of Trustees. Article 434, P.C., condemns the evasion of Article 432 by the trading of appointments but your letter does not show that such has been done in this instance. The statutes do not condemn the appointment which you mention under the facts submitted and your question is therefore answered in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*
Glenn R. Lewis
Assistant

GRL:FL

APPROVED:

Gerald C. Mann
Gerald C. Mann (signed)

ATTORNEY GENERAL OF TEXAS